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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 191022-0068]

RIN 0648-BJ31

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Regulatory Amendment 30

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Regulatory Amendment 30 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). For red grouper, this proposed rule would modify the spawning season closures for the commercial and recreational sectors in the exclusive economic zone (EEZ) off North Carolina and South Carolina and establish a commercial trip limit. Additionally, Regulatory Amendment 30 would revise the rebuilding schedule for red grouper. The purpose of this proposed rule

and Regulatory Amendment 30 is to modify the rebuilding schedule and extend protections for red grouper.

DATES: Written comments on the proposed rule must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2019-0117," by either of the following methods:

- *Electronic submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0117>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Mary Vara, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information

submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of Regulatory Amendment 30 may be obtained from www.regulations.gov or the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/regulatory-amendment-30-red-grouper-rebuilding-plan>. Regulatory Amendment 30 includes an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis (IRFA).

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: mary.vara@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the Snapper-Grouper FMP and includes red grouper, among other snapper-grouper species. The Snapper-Grouper FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

In 2010, a Southeast Data, Assessment and Review (SEDAR) benchmark assessment (SEDAR 19, 2010) was completed for South Atlantic red grouper. Based on the results of SEDAR 19, NMFS determined that red grouper was overfished and undergoing overfishing. Amendment 24 to the Snapper-Grouper FMP established a 10-year rebuilding plan that began in 2011, with an end date of 2020 (77 FR 34254; June 11, 2012). Management measures implemented through Amendment 24 modified red grouper commercial and recreational annual catch limits (ACLs), and sector-specific accountability measures (AMs). Amendment 24 also removed the combined gag, black grouper, and red grouper commercial quota as well as the commercial and recreational ACLs and AMs.

A stock assessment update (SEDAR 53) for red grouper was completed in February 2017 using data through 2015. SEDAR 53 indicated the stock was still overfished and undergoing overfishing, and that stock rebuilding would not be possible by 2020, which is the terminal year of the current rebuilding plan. Therefore, on September 27, 2017, NMFS sent a letter to the Council stating that the South Atlantic red grouper stock was overfished and undergoing overfishing and not making adequate progress towards rebuilding. The Magnuson-Stevens Act requires the

implementation of management measures to end overfishing immediately and revise or implement a rebuilding plan within 2 years of notification by NMFS to the Council of this stock status. NMFS implemented actions in Abbreviated Framework Amendment 1 to the FMP on August 27, 2018 (83 FR 35435), to immediately end overfishing of red grouper by reducing the total, commercial, and recreational ACLs based on the acceptable biological catch recommendation from the Council's Scientific and Statistical Committee.

Continued harvest at the levels specified in Abbreviated Framework Amendment 1 is expected to allow for rebuilding the red grouper stock within 10 years, but because the stock is not projected to fully rebuild by 2020 (SEDAR 53), the Council must revise the current rebuilding plan so the stock rebuilds in the timeframe mandated by the Magnuson-Stevens Act. Regulatory Amendment 30 addresses the proposed revision to the rebuilding plan and is discussed below.

The proposed rule for Regulatory Amendment 30 would extend the red grouper spawning season prohibition for the commercial and recreational sectors in the EEZ off North Carolina and South Carolina in response to stakeholder concerns that red grouper are often found in spawning condition past the January through April shallow-water

grouper spawning season closure, particularly in May. The proposed rule also establishes a commercial trip limit for red grouper to help rebuild the stock and discourage direct fishing for the species.

Management Measures Contained in this Proposed Rule

For red grouper, this proposed rule would modify the spawning season closure for the commercial and recreational sectors in the EEZ off North Carolina and South Carolina, and establish a commercial trip limit.

Commercial and Recreational Spawning Season Closure

Currently, the commercial and recreational spawning season closure for shallow-water groupers, which includes red grouper, is January through April each year throughout the South Atlantic EEZ. In the EEZ off North Carolina and South Carolina, red grouper spawning occurs during February through June and peaks in April. This proposed rule would extend the January through April spawning season closure for red grouper through May in the EEZ off North Carolina and South Carolina for both the commercial and recreational sectors.

This action was developed in response to stakeholder concerns that red grouper are often found in spawning condition past the January through April shallow-water grouper spawning season closure, particularly in May, in

the EEZ off North Carolina and South Carolina. The Council did not propose a similar May closure for the EEZ off Georgia or Florida in Regulatory Amendment 30 based on stakeholder feedback that red grouper spawn earlier in the year in the southern part of the Council's jurisdiction. Additionally, the Council noted that there are minimal landings of red grouper in Georgia, which would preclude the need to extend the closure past April in the EEZ off that state. This proposed rule would also extend the prohibition on commercial sale and purchase of red grouper in the EEZ off South Carolina and North Carolina from January through May as part of the revised spawning season closure.

Commercial Trip Limit

There is currently no commercial trip limit for red grouper in the South Atlantic. This proposed rule would establish a commercial trip limit for red grouper harvested in the South Atlantic EEZ of 200 lb (91 kg), gutted weight. The Council determined that the proposed trip limit would help to rebuild the red grouper stock by discouraging directed commercial fishing for the species. However, the proposed trip limit would likely not substantially reduce the current level of commercial harvest of red grouper as the majority of trips historically have landed less than

200 lb (91 kg) of red grouper. The trip limit would minimize adverse socio-economic effects by allowing fishers to retain red grouper caught incidentally when fishing for other snapper-grouper species. The Council selected a commercial trip limit that in combination with extending the spawning season closure for red grouper off North Carolina and South Carolina would constrain harvest to help rebuild the stock. Further, the Council chose a trip limit that was large enough to allow fishers for whom red grouper are an important species (such as those in South Florida and the Florida Keys) to maintain some trip profitability.

Measures in Regulatory Amendment 30 Not Codified in this Proposed Rule

The Council selected a 10-year rebuilding plan for red grouper in Regulatory Amendment 30, which is the maximum allowed under the Magnuson-Stevens Act, and would begin in 2019 (Year 1) and end in 2028 (Year 10). The Council determined that a longer time period for red grouper to rebuild would better accommodate the uncertainty relative to recruitment and stock productivity. As described in Regulatory Amendment 30, the red grouper stock has been experiencing multiple years of low recruitment (as evidenced by the SEDAR 53 stock assessment), and the lack

of stock rebuilding progress may largely be due to ecosystem-related factors.

Implementation of reduced total and sector ACLs beginning in 2018, which was specified in Abbreviated Framework Amendment 1, is expected to end overfishing of South Atlantic red grouper. Given that poor recruitment appears to be the primary factor currently affecting stock rebuilding, and the projections upon which the rebuilding schedules alternatives in Regulatory Amendment 30 are based assumed long-term average recruitment, the Council selected the alternative for the longest rebuilding schedule (10 years) to account for the possibility that future recruitment might be lower than assumed in the projections.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Snapper-Grouper FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under E.O. 12866.

NMFS prepared an IRFA, as required by section 603 of the RFA, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the **SUMMARY** section of the preamble.

The rule concerns commercial and recreational fishing for red grouper in Federal waters of the South Atlantic. It directly effects both anglers (recreational fishers) and commercial fishing businesses that harvest red grouper in the South Atlantic EEZ.

Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private, or leased vessels. Therefore, neither estimates of the number of anglers nor the impacts on them are required or provided in this analysis.

Any business that operates a commercial fishing vessel that harvests red grouper in the South Atlantic EEZ must have a valid Federal snapper-grouper permit attached to that vessel.

From 2013 through 2017, an annual average of 225 commercially permitted vessels reported landings of red grouper. That annual average declined to 210 from 2015 through 2017. Those two annual averages are used to estimate the range of vessels. NMFS expects all of the businesses with the 210 to 225 vessels operate primarily in the commercial fishing industry. For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide. The average annual total revenue for a vessel that lands red grouper is substantially less than that. Moreover, none of the permitted vessels that landed red grouper had annual revenue close to or greater than \$11 million. Hence, all of

the businesses that operate permitted vessels that land red grouper are small.

This rule would not impose additional reporting or record-keeping requirements on small businesses. The action in Regulatory Amendment 30 to change the rebuilding schedule would have an indirect impact on small businesses but that impact is dependent on subsequent actions. The action to revise the seasonal closure for the recreational sector would have a direct impact on anglers, but as explained previously, anglers are not small entities.

The action to revise the seasonal closure for the commercial sector would add the month of May to the current January through April prohibition on fishing for and possession of red grouper in Federal waters off North Carolina and South Carolina. That additional month would eliminate from 6,956 lb (3,155 kg), gutted weight, to 12,477 lb (6,660 kg), gutted weight, of red grouper commercially landed in May, and the average annual loss per Carolina vessel that lands red grouper in May would range from 141 lb (64 kg), gutted weight, to 210 lb (95 kg), gutted weight, and from \$649 to \$977 (2017 dollars). However, when differentiated by state, the action would reduce the average North Carolina vessel's annual revenue by \$497 to \$649 (2017 dollars) (1.3 percent to 1.8 percent)

and reduce the average South Carolina vessel's annual revenue by \$713 to \$977 (2017 dollars) (0.6 percent to 0.7 percent).

Finally, the last action would establish a 200-lb (91 kg), gutted weight, commercial trip limit in Federal waters of the South Atlantic in effect when fishing is allowed. From 2013 through 2017, an annual average of nine vessels landed more than 200 lb (91 kg), gutted weight, of red grouper in North Carolina and South Carolina from June through December. Those nine vessels represent from 9.7 percent to 11.9 percent of the vessels that land red grouper annually in North Carolina and South Carolina. The proposed trip limit would reduce average landings by 107-117 lb (49-53 kg), gutted weight, per trip and average dockside revenue from \$498 to \$538 (2017 dollars). Those losses represent less than 1 percent of average annual revenues for North Carolina and South Carolina vessels.

An annual average of three vessels make seven trips that land more than 200 lb (91 kg), gutted weight, of red grouper in Georgia and Florida from May through December. Those three Florida/Georgia vessels represent from 2.1 percent to 2.2 percent of permitted vessels that land red grouper in Georgia and Florida annually. NMFS estimates that each of the three vessels would lose from \$3,441 to

\$3,471 (2017 dollars) in dockside revenue annually. Those figures represent from 6.5 percent to 6.6 percent of the average Florida/Georgia vessel's dockside revenue from all landings; however, the three vessels have annual revenues substantially greater than the average for the 134 to 143 Florida/Georgia vessels that land red grouper annually.

NMFS concludes this rule may have a significant economic impact on a substantial number of small commercial fishing businesses that operate federally permitted fishing vessels that harvest red grouper from the South Atlantic EEZ.

Four alternatives to adding May to the current 4-month January through April prohibition on fishing for or possessing red grouper in Federal waters off North Carolina and South Carolina were considered, but were not selected. The first alternative, the *status quo*, would have no impact on small businesses. Two non-selected alternatives would change the timing of the 4-month prohibition: from either February through May or March through June. A prohibition from February through May would have a smaller adverse impact than the selected alternative; however, it would have a smaller beneficial impact on the stock because snapper-grouper fishing off North Carolina and South Carolina is at its lowest from January through March. A

March through June prohibition would extend into the red grouper season that is in Federal waters off North Carolina and off South Carolina, and its adverse impact would be larger than the selected alternative. The fourth non-selected alternative would establish a 6-month prohibition that would have the largest adverse economic impact of all alternatives.

Four alternatives to a 200-lb (91-kg), gutted weight, trip limit were considered, but were not selected. In addition to the *status quo* of no commercial trip limit, three other alternatives would have established smaller trip limits. Those three alternatives would have a larger adverse economic impact than the selected alternative.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Red grouper, Seasonal prohibition, South Atlantic, Trip limits.

Dated: October 22, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.183, revise paragraph (b)(1) to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(1) *Seasonal closure of the commercial and recreational sectors for gag and associated grouper species.* During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any South Atlantic shallow-water grouper (SASWG): gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney. For a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, these prohibitions against fishing, harvesting, or possessing apply in the South Atlantic, *i.e.*, in state or Federal

waters. Additionally, in the month of May, no person may fish for, harvest, or possess any South Atlantic red grouper in or from the South Atlantic EEZ off North Carolina or off South Carolina. For a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, these prohibitions against fishing, harvesting, or possessing red grouper in May apply in state waters off North Carolina and off South Carolina.

* * * * *

3. In § 622.191, add paragraph (a) (14) to read as follows:

§ 622.191 Commercial trip limits.

(a) * * *

(14) *Red grouper*. Until the commercial ACL specified in § 622.193(d) (1) (iii) is reached—200 lb (91 kg), gutted weight; 236 lb (107 kg), round weight. See § 622.193(d) (1) for the limitations regarding red grouper after the commercial ACL is reached.

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4. In § 622.192, revise paragraph (h) to read as follows:

§ 622.192 Restrictions on sale/purchase.

* * * * *

(h) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, *i.e.*, in state or Federal waters. Additionally, in the month of May, no person may sell or purchase South Atlantic red grouper harvested from or possessed in the South Atlantic EEZ off North Carolina or off South Carolina, or, if harvested or possessed by a vessel for which a valid Federal commercial permit for South Atlantic snapper-grouper has been issued, harvested in or from the EEZ or state waters off North Carolina or off South Carolina. The prohibitions on sale and purchase during January through May do not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. These prohibitions also do not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish are accompanied by documentation of harvest outside the South Atlantic. The

requirements for such documentation are specified in
paragraph (i) of this section.

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